

# **EXHIBIT I**

CLOSED, reassigned

**U.S. District Court  
Eastern District of Michigan (Detroit)  
CIVIL DOCKET FOR CASE #: 2:05-cv-71601-ADT-SDP**

Detroit Free Press, Incorporated v. United States Department of Justice	Date Filed: 04/25/2005
Assigned to: District Judge Anna Diggs Taylor	Date Terminated: 10/07/2005
Referred to: Magistrate Judge Steven D Pepe	Jury Demand: None
Cause: No cause code entered	Nature of Suit: 895 Freedom of Information Act
	Jurisdiction: U.S. Government Defendant

**Plaintiff**

**Detroit Free Press, Incorporated**

represented by **Brian D. Wassom**  
Honigman, Miller,  
39400 Woodward Avenue  
Suite 101  
Bloomfield Hills, MI 48304-5151  
248-566-8490  
Fax: 248-566-8491  
Email: bdw@honigman.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Herschel P. Fink**  
Detroit Free Press  
615 W. Lafayette Blvd.  
Detroit, MI 48226  
313-550-5500  
Email: hfink@freepress.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**United States Department of Justice**

represented by **Rupa Bhattacharyya - INACTIVE**  
U.S. Department of Justice  
Civil Division  
555 Foruth Street, N.W.  
Suite 4213  
Washington, DC 20001  
202-514-3146  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Susan K. DeClercq**  
 U.S. Attorney's Office  
 211 W. Fort Street  
 Suite 2001  
 Detroit, MI 48226  
 313-226-9149  
 Email: Susan.DeClercq@usdoj.gov  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
04/25/2005	<u>1</u>	COMPLAINT filed by Detroit Free Press, Incorporated against United States Department of Justice, Receipt No. 200524767.(NHoll, ) (Entered: 04/25/2005)
04/27/2005	<u>2</u>	SUMMONS Returned Executed to U.S. Attorney, on behalf of United States Department of Justice served on 4/25/2005, answer due 6/24/2005 (Wassom, Brian) (Entered: 04/27/2005)
05/02/2005	<u>3</u>	SUMMONS Returned Executed. U.S. Dept. of Justice served on 04/27/2005 (Wassom, Brian) (Entered: 05/02/2005)
05/02/2005	<u>4</u>	(ERROR: summons served on U.S. Attorney General) SUMMONS Returned Executed to U.S. Attorney, on behalf of United States Department of Justice served on 4/27/2005, answer due 6/27/2005 (Wassom, Brian) Modified on 5/3/2005 (DPer, ). (Entered: 05/02/2005)
05/25/2005	<u>5</u>	NOTICE of Appearance by Susan K. DeClercq on behalf of United States Department of Justice. (DeClercq, Susan) (Entered: 05/25/2005)
05/25/2005	<u>6</u>	MOTION to Dismiss <i>for Lack of Jurisdiction</i> by United States Department of Justice. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit A - Cunningham Declaration# <u>3</u> Exhibit B - Carbe v. ATF# <u>4</u> Exhibit C - Stewart v. Johnson# <u>5</u> Exhibit D - Thomas v. IRS)(DeClercq, Susan) (Entered: 05/25/2005)
06/01/2005	<u>7</u>	RESPONSE to <u>6</u> MOTION to Dismiss <i>for Lack of Jurisdiction</i> filed by Detroit Free Press, Incorporated. (Attachments: # <u>1</u> # <u>2</u> # <u>3</u> )(Fink, Herschel) (Entered: 06/01/2005)
06/06/2005	<u>8</u>	NOTICE of hearing on <u>6</u> MOTION to Dismiss <i>for Lack of Jurisdiction</i> . Motion Hearing set for 6/15/2005 02:00 PM before Honorable Nancy G Edmunds. (CHem, ) (Entered: 06/06/2005)
06/10/2005	<u>9</u>	REPLY to Response re <u>6</u> MOTION to Dismiss <i>for Lack of Jurisdiction</i> filed by United States Department of Justice. (Attachments: # <u>1</u> Exhibit A - Kristobans Declaration)(DeClercq, Susan) (Entered: 06/10/2005)
06/15/2005	<u>10</u>	AMENDED COMPLAINT filed by Detroit Free Press, Incorporated against United States Department of Justice. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit)(Fink, Herschel) (Entered: 06/15/2005)
06/15/2005		Minute Entry -Motion Hearing held on 6/15/2005 re <u>6</u> MOTION to Dismiss <i>for Lack of Jurisdiction</i> filed by United States Department of Justice, before



		Honorable Nancy G Edmunds. (Court Reporter Suzanne Jacuques) (CHem, ) (Entered: 06/17/2005)
06/16/2005	<u>11</u>	ORDER denying <u>6</u> Motion to Dismiss- Signed by Honorable Nancy G Edmunds. (CHem, ) (Entered: 06/16/2005)
06/27/2005	<u>12</u>	ORDER REASSIGNING CASE from Judge Nancy G Edmunds, Magistrate Judge Paul J Komives to Judge Anna Diggs Taylor and Magistrate Judge Steven D Pepe (ATee, ) (Entered: 06/28/2005)
06/29/2005	<u>13</u>	ANSWER to Amended Complaint with Affirmative Defenses by United States Department of Justice.(DeClercq, Susan) (Entered: 06/29/2005)
07/07/2005	<u>14</u>	MOTION for Summary Judgment by Detroit Free Press, Incorporated. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1 Order# <u>3</u> Exhibit 2 Sixth Circuit Opinion# <u>4</u> Exhibit 3 US FOIA Guide# <u>5</u> Exhibit 4 US Dept of Justice Response to FOIA request# <u>6</u> Exhibit 5 Detroit Free Press Article# <u>7</u> Exhibit 6 NY Times Article March 28 2005# <u>8</u> Exhibit 7 NY Times Article March 16 2005)(Fink, Herschel) (Entered: 07/07/2005)
07/21/2005	<u>17</u>	NOTICE of hearing on <u>14</u> MOTION for Summary Judgment. Responses due by 8/2/2005. Replies due by 8/9/2005. Motion Hearing set for 9/19/2005 09:00 AM before Honorable Anna Diggs Taylor. (CCoh, ) (Entered: 08/05/2005)
08/02/2005	<u>15</u>	Cross MOTION for Summary Judgment <i>and Brief in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> by United States Department of Justice. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit 1- Auerbach Declaration# <u>3</u> Exhibit 2 - Cunningham Declaration)(DeClercq, Susan) (Entered: 08/02/2005)
08/03/2005	<u>16</u>	CERTIFICATE OF SERVICE by United States Department of Justice re <u>15</u> Cross MOTION for Summary Judgment <i>and Brief in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> . (DeClercq, Susan) (Entered: 08/03/2005)
08/22/2005	<u>18</u>	NOTICE of hearing on <u>15</u> Cross MOTION for Summary Judgment <i>and Brief in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> . Responses due by 9/2/2005. Replies due by 9/9/2005. Motion Hearing set for 9/19/2005 09:00 AM before Honorable Anna Diggs Taylor. (ATee, ) (Entered: 08/23/2005)
09/01/2005	<u>19</u>	RESPONSE to <u>15</u> Cross MOTION for Summary Judgment <i>and Brief in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> filed by Detroit Free Press, Incorporated. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit Ex 8: 1997 Policy# <u>3</u> Exhibit Ex 9: Aug. 10, 2005 Memo# <u>4</u> Exhibit Ex. 10: 1988 Testimony)(Fink, Herschel) (Entered: 09/01/2005)
09/02/2005	<u>20</u>	SUPPLEMENTAL RESPONSE to <u>15</u> Cross MOTION for Summary Judgment <i>and Brief in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> Supplemental Response filed by Detroit Free Press, Incorporated. (Fink, Herschel) Modified on 9/6/2005 (DPer, ). (Entered: 09/02/2005)
09/09/2005	<u>21</u>	REPLY to Response re <u>15</u> Cross MOTION for Summary Judgment <i>and Brief</i>



		<i>in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> filed by United States Department of Justice. (Attachments: # <u>1</u> Ex. A -- 8.10.2005 USMS Memorandum)(Bhattacharyya, Rupa) (Entered: 09/09/2005)
09/19/2005		Minute Entry -Motion Hearing held on 9/19/2005 re <u>14</u> MOTION for Summary Judgment filed by Detroit Free Press, Incorporated, <u>15</u> Cross MOTION for Summary Judgment <i>and Brief in Support Thereof and in Opposition to Motion for Summary Judgment by Plaintiff</i> filed by United States Department of Justice, before Honorable Anna Diggs Taylor. Disposition: DENIED and GRANTED, RESPECTIVELY. Plaintiff's Motion for Attorney Fees GRANTED.(Court Reporter Carol Sapala) (JCurr, ) (Entered: 09/20/2005)
10/07/2005	<u>22</u>	JUDGMENT. Signed by Honorable Anna Diggs Taylor. (DPer, ) (Entered: 10/12/2005)
11/04/2005	<u>23</u>	[FILING ERROR: exhibits not labeled in accordance with Rule 18 of Electronic Filing Policies and Procedures]PETITION for Attorney Fees by Detroit Free Press, Incorporated. (Attachments: # <u>1</u> Index of Exhibits # <u>2</u> Exhibit Dowd Opinion# <u>3</u> Exhibit Ex B# <u>4</u> Exhibit Ex C# <u>5</u> Exhibit Ex D# <u>6</u> Exhibit Ex E# <u>7</u> Exhibit Ex F# <u>8</u> Exhibit Ex G# <u>9</u> Exhibit Ex H# <u>10</u> Exhibit Ex I)(Fink, Herschel) Modified on 11/7/2005 (DPer, ). (Entered: 11/04/2005)
11/07/2005	<u>24</u>	DECLARATION by Herschel P. Fink re <u>23</u> Petition for Attorney Fees, <i>Replacing Exhibit G of said Petition</i> , filed by Detroit Free Press, Incorporated. (Wassom, Brian) (Entered: 11/07/2005)
11/22/2005	<u>25</u>	[FILING ERROR: RULE 11 PROPOSED ORDER, RULE 9 SIGNATURE BLOCK AND LR5.1 SPACING FORMAT] MOTION for Extension of Time to File Response/Reply as to <u>23</u> Petition for Attorney Fees, ( <i>Unopposed</i> ) by United States Department of Justice. (Attachments: # <u>1</u> Proposed Order) (Bhattacharyya, Rupa) Modified on 11/23/2005 (BSoc, ). (Entered: 11/22/2005)
12/01/2005	<u>26</u>	ORDER Granting <u>25</u> Defendants' Unopposed Motion for Extension of Time to File Response to <u>23</u> Petition for Attorney Fees. Response due by 12/16/2005- Signed by Honorable Anna Diggs Taylor. (JCurr, ) (Entered: 12/01/2005)
12/20/2005	<u>27</u>	LETTER from Herschel P. Fink. (DPer, ) (Entered: 12/21/2005)

PACER Service Center			
Transaction Receipt			
02/12/2013 15:21:14			
PACER Login:	hf1889	Client Code:	
Description:	Docket Report	Search Criteria:	2:05-cv-71601-ADT-SDP
Billable Pages:	4	Cost:	0.40

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ORIGINAL

DETROIT FREE PRESS, INC.,  
a Michigan corporation,  
Plaintiffs,

v.

UNITED STATES DEPARTMENT OF JUSTICE,  
Defendant.

JUDGE : Edmunds, Nancy G.  
DECK : S. Division Civil Deck  
DATE : 04/25/2005 @ 08:26:50  
CASE NUMBER : 2:05CV71601  
CMP DETROIT FREE PRESS, INC VS  
US DEPT OF JUSTICE (LE)

Herschel P. Fink (P13427)  
Brian D. Wassom (P60381)  
Honigman Miller Schwartz and Cohn LLP  
Attorneys for Plaintiff Detroit Free Press, Inc.  
2290 First National Building  
Detroit, MI 48226  
(313) 465-7400  
bdw@honigman.com

MAGISTRATE JUDGE PAUL J. KONIVES

COMPLAINT

Now comes the Detroit Free Press, Inc. ("Free Press"), by its attorneys Honigman Miller Schwartz and Cohn LLP, and for its complaint for relief from violations of the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), by the Department of Justice ("DOJ"), says:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Free Press is a Michigan corporation with its principal place of business in Detroit, Michigan. It publishes the *Detroit Free Press*, the largest general circulation newspaper in Michigan.



2. Defendant DOJ is an agency in the Executive Branch of the United States Government. The DOJ comprises several component agencies, including the United States Marshals Service ("Marshals Service").

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1361, and/or 5 U.S.C. § 552(a)(4)(B).

4. Venue is appropriate in the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. § 1391 and 5 U.S.C. § 552(a)(4)(B).

#### COMMON ALLEGATIONS

5. On March 25, 2005, David Ashenfelter, in his capacity as federal court reporter for the Free Press, submitted a FOIA request for documents to the FOIA Coordinator of the Marshals Service's Detroit office ("the Request"). Specifically, the Request sought the "mug shot" photographs of six persons currently facing criminal prosecution in the United States District Court for the Eastern District of Michigan. The individuals had been indicted, had appeared in open court, and were awaiting trial. The Request is attached as Exhibit A.

6. This Court and the United States Court of Appeals for the Sixth Circuit have previously established the Free Press's right under FOIA to obtain such documents. In *Detroit Free Press v. Department of Justice*, Case No. 93-74692 (J. Anna Diggs Taylor), *aff'd*, 73 F.3d 93 (6th Cir. 1996), *reh'g denied*, 1996 U.S. App. LEXIS 8867 ("*Detroit Free Press I*"), this Court upheld a materially identical request by the Free Press for mug shots from the Marshals Service.

7. The Sixth Circuit further held in *Detroit Free Press I* that "in an ongoing criminal proceeding, in which the names of the defendants have already been divulged and in which the defendants themselves have already appeared in open court, . . . no privacy rights are implicated

[by disclosure of mug shots]." 73 F.3d at 97. The mug shots sought here are of defendants who have already appeared in currently ongoing criminal trials. Exhibit B (docket sheets). Their identities and proceedings have already been reported by the Free Press and other news outlets. Exhibit C (articles). Therefore, no privacy concerns are implicated by the Request.

8. Nevertheless, the DOJ has denied the Free Press's Request.

9. The DOJ's refusal to comply with the Request is arbitrary, capricious, and in willful disregard of its obligations under FOIA and *Detroit Free Press I*. Indeed, the Marshals Service and DOJ have consciously chosen to disobey the prior orders of this Court and of the Sixth Circuit. In its latest "FOIA Guide" (DOJ, Freedom of Information Act Guide, May 2004), the DOJ presumptuously and contemptuously declares that "the Sixth Circuit's singular view of an individual's privacy as enunciated by . . . *Detroit Free Press* should no longer be regarded as authoritative even within the Sixth Circuit." Exhibit D.

10. The Free Press has exhausted its administrative remedies. Specifically, pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the Marshals Service had 20 business days, or until April 22, 2005 to respond to the March 25, 2005 Request. It did not timely respond. Therefore, pursuant to 5 U.S.C. § 552(a)(6)(C)(i), the Free Press has exhausted its administrative remedies.

11. This action should receive expedited consideration pursuant to 28 U.S.C. § 1657(a). The requested mug shots pertain to ongoing criminal proceedings. They are therefore immediately newsworthy, and that newsworthiness decreases with each passing day. Moreover, as the Sixth Circuit's *Detroit Free Press I* and other judicial decisions have recognized, mug shots have unique value in informing the public of its government's actions and in holding law enforcement officials accountable.



12. The Free Press is entitled to an award of its reasonable attorneys' fees and other litigation costs under 5 U.S.C. § 552(a)(4)(E).

**COUNT I - VIOLATION OF FOIA**

13. The Free Press incorporates herein each of the preceding paragraphs.

14. The DOJ's refusal to comply with the Request violates its duties under FOIA.

15. The Free Press is entitled under FOIA to relief from this Court compelling DOJ to comply with the Request.

**COUNT II - CONTEMPT**

16. The Free Press incorporates herein each of the preceding paragraphs.

17. The DOJ is under a continuing obligation to follow this Court's order in *Detroit Free Press I* to comply with FOIA requests for mug shots of defendants in ongoing criminal proceedings, especially as to requests made within the jurisdiction of the Sixth Circuit.

18. By refusing the Request, the DOJ acted in contempt of this Court's order in *Detroit Free Press I*.

19. This Court has the power to punish this act of contempt pursuant to 5 U.S.C. § 552(a)(4)(G), as well as through its own inherent power.

WHEREFORE, Plaintiffs request that they be granted the following relief:

- A. Expedited scheduling, briefing, and consideration of this action;
- B. An order directing the DOJ and the Marshals Service to produce to the Free Press the mug shots listed in the Request;
- C. As order finding the DOJ in contempt of this Court's Order in *Detroit Free Press I* and assessing appropriate penalties;
- D. An award of the Free Press's costs and attorneys' fees related to this action;

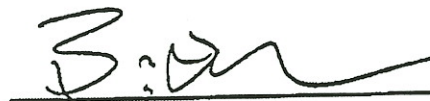
2:05-cv-71601-ADT-SDP Doc # 1 Filed 04/25/05 Pg 5 of 46 Pg ID 5

E. Any further relief that the Court deems just.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

By:



Herschel P. Fink (P13427)

Brian D. Wassom (P60381)

Attorneys for Plaintiff Detroit Free Press, Inc.  
2290 First National Building  
Detroit, Michigan 48226  
(313) 465-7400  
bdw@honigman.com

DATED: April \_\_, 2005  
DETROIT.1784676.2